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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on 12th December, 2019:—

BILL No. 376 OF 2019

A Bill further to amend the Insolvency and Bankruptcy Code, 2016.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Insolvency and Bankruptcy Code (Second Amendment) Act, 2019.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Amendment
of section 5.

2. In section 5 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the principal Act),—

31 of 2016.

(i) in clause (12), the proviso shall be omitted;

(ii) in clause (15), after the words "during the insolvency resolution process period" occurring at the end, the words "and such other debt as may be notified" shall be inserted.

Amendment
of section 7.

3. In section 7 of the principal Act, in sub-section (1), before the *Explanation*, the following provisos shall be inserted, namely:—

"Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2019, such application shall be modified to comply with the requirements of the first and second provisos within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.".

Amendment
of section 11.

4. In section 11 of the principal Act, the *Explanation* shall be numbered as *Explanation I* and after *Explanation I* as so numbered, the following *Explanation* shall be inserted, namely:—

"*Explanation II*.—For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor.".

Amendment
of section 14.

5. In section 14 of the principal Act,—

(a) in sub-section (1), the following *Explanation* shall be inserted, namely:—

"*Explanation*.—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;";

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) The supply of goods or services that the interim resolution professional or resolution professional, as the case may be, considers critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or

services shall not be terminated, suspended or interrupted during the period of moratorium, except if such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.";

(c) in sub-section (3), for clause (a), the following clause shall be substituted, namely:—

"(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;".

6. In section 16 of the principal Act, in sub-section (1), for the words "within fourteen days from the insolvency commencement date", the words "on the insolvency commencement date" shall be substituted.

Amendment of section 16.

7. In section 21 of the principal Act, in sub-section (2), in the second proviso, after the words "convertible into equity shares", the words "or completion of such transactions as may be prescribed," shall be inserted.

Amendment of section 21.

8. In section 23 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:—

Amendment of section 23.

"Provided that the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period, until an order approving the resolution plan under sub-section (1) of section 31 or appointing a liquidator under section 34 is passed by the Adjudicating Authority.".

9. In section 29A of the principal Act,—

Amendment of section 29A.

(i) in clause (c), in the second proviso, in the *Explanation I*, after the words, "convertible into equity shares", the words "or completion of such transactions as may be prescribed," shall be inserted;

(ii) in clause (j), in *Explanation I*, in the second proviso, after the words "convertible into equity shares", the words "or completion of such transactions as may be prescribed," shall be inserted.

10. After section 32 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 32A.

"32A. (1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not—

Liability for prior offences, etc.

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a "designated partner" as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008, an "officer who is in default", as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not—

- (i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or
- (ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

*"Explanation.—*For the purposes of this sub-section, it is hereby clarified that,—

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.".

Amendment of
section 227.

11. In section 227 of the principal Act,—

(i) for the words "examined in this Code", the words "contained in this Code" shall be substituted;

(ii) the following *Explanation* shall be inserted, namely:—

*"Explanation.—*For the removal of doubts, it is hereby clarified that the insolvency and liquidation proceedings for financial service providers or categories of financial service providers may be conducted with such modifications and in such manner as may be prescribed.".

6 of 2009.

18 of 2013.

12. In section 239 of the principal Act, in sub-section (2), after clause (f), the following clauses shall be inserted, namely:—

Amendment of
section 239.

"(fa) the transactions under the second proviso to sub-section (2) of section 21;

(fb) the transactions under the *Explanation I* to clause (c) of section 29A;

(fc) the transactions under the second proviso to clause (j) of section 29A;".

13. In section 240 of the principal Act, in sub-section (2), after clause (i), the following clause shall be inserted, namely:—

Amendment of
section 240.

"(ia) circumstances in which supply of critical goods or services may be terminated, suspended or interrupted during the period of moratorium under sub-section (2A) of section 14;".

STATEMENT OF OBJECTS AND REASONS

The Insolvency and Bankruptcy Code, 2016 (the Code) was enacted with a view to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order or priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India.

2. A need was felt to give the highest priority in repayment to last mile funding to corporate debtors to prevent insolvency, in case the company goes into corporate insolvency resolution process or liquidation, to prevent potential abuse of the Code by certain classes of financial creditors, to provide immunity against prosecution of the corporate debtor and action against the property of the corporate debtor and the successful resolution applicant subject to fulfilment of certain conditions, and in order to fill the critical gaps in the corporate insolvency framework, it has become necessary to amend certain provisions of the Insolvency and Bankruptcy Code, 2016.

3. The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019, *inter alia*, provides for the following, namely:—

- (i) to omit the proviso to clause (12) of section 5 of the Code so as to clarify that the insolvency commencement date is the date of admission of an application for initiating corporate insolvency resolution process;
- (ii) to amend section 7 of the Code to insert certain provisos specifying a minimum threshold for certain classes of financial creditors for initiating insolvency resolution process;
- (iii) to amend section 11 of the Code so as to clarify that a corporate debtor should not be prevented from filing an application for initiation of corporate insolvency resolution process against other corporate debtors;
- (iv) to amend section 14 of the Code to clarify that a licence, permit, registration, quota, concession, clearances or a similar grant or right cannot be terminated or suspended during the Moratorium period;
- (v) to amend section 16 of the Code so as to provide that an insolvency resolution professional should be appointed on the date of admission of the application for initiation of insolvency resolution process;
- (vi) to amend section 23 of the Code to enable the "resolution professional" to manage the affairs of the corporate debtor during interim period between the expiry of corporate insolvency resolution process till the appointment of a liquidator;
- (vii) to insert a new section 32A so as to provide that the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease under certain circumstances;
- (viii) to amend section 227 of the Code so as to clarify that the insolvency and liquidation proceedings for financial service providers may be conducted with such modifications and in such manner as may be prescribed; and
- (ix) the other amendments which are of consequential in nature.

4. The Bill seeks to achieve the above objectives.

NIRMALA SITHARAMAN.

NEW DELHI;

The 10th December, 2019.

FINANCIAL MEMORANDUM

The Bill if enacted, would not involve any expenditure either recurring or non-recurring from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill seeks to insert sub-section (2A) in section 14 of the Code which confers power upon the Board to specify the circumstances in which supply of critical goods or services may be terminated, suspended or interrupted during the period of moratorium under sub-section (2A) of section 14.

Clause 7 of the Bill seeks to amend section 21 of the Code which confers power upon the Central Government to prescribe the transactions under the second proviso to sub-section (2) of section 21.

Clause 9 of the Bill seeks to amend section 29 of the Code which confers power upon the Central Government to prescribe the transactions under the *Explanation I* to clause (c) of section 29A and the transactions under the second proviso to clause (j) of section 29A.

The matters in respect of which the aforementioned rules and regulations may be made are matters of procedure and administrative detail, and as such, it is not practicable to provide for them in the proposed Bill itself. The delegation of legislative power is, therefore, of a normal character.

SNEHLATA SHRIVASTAVA,
Secretary General.